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10 UNITED STATES BANKRUPTCY COURT
11 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

12 **In re:**) Case No.: 17-52577 SLJ
13)
14 **ABRAHAM VALERIO,**) Chapter 13
15)
16) **MOTION BY DEBTOR FOR APPROVAL**
17 Debtor.) **OF ADDITIONAL PROVISION IN**
18) **CHAPTER 13 PLAN**
19)
20) Date: not set
21) Time: not set
22) Place: Courtroom 3020
23)
24)
25)
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17 Abraham Valerio (“Debtor”), through her attorney, Brette L. Evans files this Motion for
18 Approval of Additional Provision in Chapter 13 Plan (the “Debtor’s Motion”) to obtain court
19 required approval to include an additional provision in the chapter 13 plan proposed by the
20 Debtor. The additional provision at issue is a provision that was added to clarify that the
21 payment set forth in Section 2.04, regarding the “Fixed Arrearage Payment” is a one-time
payment and it is not a reoccurring payment.

22 **Background**

23 The Debtor filed this case on October 24, 2017. The *First Amended Plan* (Docket Item
24 45) contains the additional provision attachment. The prior plans were drafted as refinance
25 plans, and did have a different sum allocated in Section 2.04 pertaining to the *Fixed Payment
Arrearage*. The *First Amended Plan* provides for the immediate sale of the Debtor’s real

property, thereby allowing the payment to the mortgage creditor, “*US Bank, et al.*” (hereinafter referred to as “Creditor”) to be paid in full, and all at one time.

Argument

1. Court Approval Of The Additional Provision Is Required Before The Trustee Can Recommend Confirmation.

On March 8, 2016, Judges Johnson and Hammond attended a meeting of the Chapter 13 Committee at the San Jose Courthouse, at which they announced to the bar on behalf of the entire San Jose Division that no model chapter 13 plan with any additional provision(s) should be placed on the Court's uncontested confirmation calendar unless the additional provision(s) had been previously approved by the Court. Their stated concern was to ensure that the Court would have the opportunity to consider whether additional briefing and/or an evidentiary hearing would be needed before the Court could determine whether or not a particular additional provision would be appropriate.

In this case, the Debtor's Motion for Obtaining Court approval of additional provisions appears to be well-suited for a "Notice and Opportunity for Hearing" procedure.

The Debtor has included the additional provision in her amended plan in order to resolve an issue raised by her mortgage creditor, *US Bank, et al*, who has objected to confirmation, stating that the prior proffered payment schedules were too long and/or too speculative. The additional provision clarifies what might be an ambiguity in the Chapter 13 Plan. The additional provision matter does not appear to be contested at this point, use of the Court's contested confirmation procedure does not appear to be necessary in this instance, because there are no legal or factual disputes to be adjudicated by the Court. The Debtor does however need the required court approval to include the additional provision in Debtor's plan before it can be confirmed.

Conclusion

WHEREFORE, the Debtor requests that the Court grant the Debtor's Motion and approve the use of the additional provision set forth in the Debtor's *First Amended Plan* (Docket Item 45), which will allow the arrears payment owing to *US Bank et al* to be paid all at once (one time payment) no later than August 2018.

Dated: May 24, 2018

/s/ Brette L. Evans

Brette L. Evans

Attorney for Debtor